



Reprinted  
February 5, 2004

## HOUSE BILL No. 1401

DIGEST OF HB 1401 (Updated February 4, 2004 2:39 pm - DI 75)

**Citations Affected:** IC 2-5; IC 5-10.2; IC 33-11.6; IC 33-19; noncode.

**Synopsis:** Public officers compensation commissions. Establishes the public officers compensation advisory commission to make recommendations to the general assembly after December 31, 2004 regarding the salaries to be paid to public officers. Provides that recommended increases in salaries may not exceed the change in the Indiana nonfarm income. Establishes a temporary public officers compensation commission authorized to adopt rules to set the compensation of public officers beginning in 2005. Provides that the temporary commission may not increase public officers' salaries to an amount greater than the amount that the salaries would have increased if the salaries of the public officers had increased by 2.5% each year since the most recent increase in salary. Provides that for purposes of computing a retirement benefit for a person who is a member of the Indiana state teachers' retirement fund and who takes an unpaid leave of absence to serve in an elected position: (1) "annual compensation" includes the total amount that was not paid to the member but would have been paid to the member during the year under the member's employment contracts if the member had not taken any unpaid leave of absence to serve in an elected position; and (2) the "average of the annual compensation" means the annual compensation for the one year of service in which the member's annual compensation was highest. Establishes a judicial salaries fee of \$6 to be collected in certain civil actions and in certain criminal, infraction, and ordinance violation actions.

**Effective:** Upon passage; June 1, 2004; July 1, 2004; July 1, 2005.

**Kuzman, Bosma, Richardson,  
Mahern**

January 20, 2004, read first time and referred to Committee on Ways and Means.  
January 29, 2004, amended, reported — Do Pass.  
February 4, 2004, read second time, amended, ordered engrossed.

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February 5, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## HOUSE BILL No. 1401

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration and to make an appropriation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 2-5-1.5 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2004]:

4 **Chapter 1.5. Public Officers Compensation Advisory**  
5 **Commission**

6 **Sec. 1. This chapter applies after December 31, 2004.**

7 **Sec. 2. As used in this chapter, "commission" refers to the**  
8 **public officers compensation advisory commission established by**  
9 **section 7 of this chapter.**

10 **Sec. 3. As used in this chapter, "growth rate" refers to the rate**  
11 **of change in Indiana nonfarm income determined by the Bureau of**  
12 **Economic Analysis of the United States Department of Commerce.**

13 **Sec. 4. As used in this chapter, "political subdivision" has the**  
14 **meaning set forth in IC 36-1-2-13.**

15 **Sec. 5. As used in this chapter, "public employee" refers to any**  
16 **of the following:**

17 **(1) An employee of the state.**

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(2) An employee of a political subdivision.

(3) An employee of any other entity whose salary is paid in any part from funds derived from taxes imposed by the state or a political subdivision.

Sec. 6. As used in this chapter, "public officer" refers to any of the following:

(1) The governor.

(2) The lieutenant governor.

(3) The secretary of state.

(4) The auditor of state.

(5) The treasurer of state.

(6) The attorney general.

(7) The clerk of the supreme court.

(8) The state superintendent of public instruction.

(9) A justice of the supreme court of Indiana.

(10) A judge of the court of appeals of Indiana.

(11) A judge of the Indiana tax court.

(12) A judge of a circuit, superior, probate, or county court.

(13) A member of the general assembly.

Sec. 7. There is established the public officers compensation advisory commission.

Sec. 8. (a) The commission consists of the following members:

(1) Two (2) members appointed by the speaker of the house of representatives. The members appointed under this subdivision may not be members of the same political party.

(2) Two (2) members appointed by the president pro tempore of the senate. The members appointed under this subdivision may not be members of the same political party.

(3) Two (2) members appointed by the governor. The members appointed under this subdivision may not be members of the same political party.

(4) Two (2) members appointed by the chief justice of the supreme court of Indiana. The members appointed under this subdivision may not be members of the same political party.

(5) One (1) member appointed by the chief judge of the court of appeals of Indiana.

(b) The following may not be a commission member:

(1) A public officer.

(2) A public employee.

(3) An individual who has a pecuniary interest in the salary of a public officer. For purposes of this subdivision, an individual has a pecuniary interest in the salary of a public

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officer if an increase in the salary of a public officer will result in an ascertainable increase in the income or net worth of the individual.

**Sec. 9. (a) The term of a commission member begins on the later of the following:**

(1) July 1 after the member is appointed.

(2) The day the member accepts the member's appointment.

(b) The term of a commission member expires on July 1 of the fourth year after the year the member's term begins.

(c) A member may be reappointed to serve a new term.

**Sec. 10. (a) If there is a vacancy on the commission, the public officer who appointed the member whose position is vacant shall appoint an individual to fill the vacancy.**

(b) The member appointed under this section shall fill the vacancy for the remainder of the unexpired term.

**Sec. 11. (a) Before July 1 of each odd numbered year, the chairman of the legislative council shall appoint one (1) member to be chair of the commission.**

(b) The member appointed as chair of the commission serves as chair beginning July 1 after appointment.

(c) A member of the commission may be reappointed as chair of the commission.

**Sec. 12. Five (5) commission members constitute a quorum. The affirmative votes of at least five (5) commission members are necessary for the commission to take official action other than to adjourn or to meet to hear reports or testimony.**

**Sec. 13. The commission shall meet at the call of the chair and at other times as the commission considers necessary.**

**Sec. 14. Each member of the commission is entitled to the following:**

(1) The salary per diem provided under IC 4-10-11-2.1(b).

(2) Reimbursement for traveling expenses as provided under IC 4-13-1-4.

(3) Other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

**Sec. 15. The legislative services agency shall provide administrative support for the commission. At the request of the legislative services agency, the state personnel department or the Indiana judicial center established by IC 33-13-14-2 shall assign staff to provide research and other support to assist the legislative**

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1 services agency in providing administrative support to the  
2 commission.

3 Sec. 16. The legislative services agency may contract with  
4 consultants on behalf of the commission as the commission  
5 considers necessary to implement this chapter.

6 Sec. 17. Except as otherwise provided by this chapter, the  
7 commission is subject to the rules of the legislative council.

8 Sec. 18. The commission shall make reports to the general  
9 assembly as required by this chapter or by the legislative council.

10 Sec. 19. The commission shall meet at least one (1) time not later  
11 than July 1 of each even-numbered year to do the following:

12 (1) Determine the growth rate from January 1 of the previous  
13 year to January 1 of the current year.

14 (2) Receive information relating to the salaries of public  
15 officers.

16 (3) Consider recommendations for suitable salaries for public  
17 officers.

18 (4) Take testimony relating to the salaries of public officers.

19 Sec. 20. (a) Not later than September 1 of each even-numbered  
20 year, the commission shall make written recommendations to the:

21 (1) legislative council; and

22 (2) budget committee;

23 concerning suitable salaries for public officers.

24 (b) When making recommendations, the commission shall make  
25 a separate recommendation, including a recommendation for no  
26 adjustment of salary, for each separate public officer listed in  
27 section 6 of this chapter.

28 (c) The commission may not recommend a rate of increase in  
29 the salary of a public officer that exceeds the growth rate.

30 Sec. 21. A commission recommendation does not take effect  
31 unless enacted by the general assembly.

32 Sec. 22. There is appropriated to the legislative services agency  
33 from the state general fund money necessary for the operation of  
34 the commission.

35 Sec. 23. Notwithstanding IC 1-1-1-8, the provisions of this  
36 chapter are not severable.

37 SECTION 2. IC 5-10.2-4-3 IS AMENDED TO READ AS  
38 FOLLOWS [EFFECTIVE JUNE 1, 2004]: Sec. 3. (a) Except as  
39 provided in subsection ~~(e)~~; **(f)**, in computing the retirement benefit for  
40 a nonteacher member, "average of the annual compensation" means the  
41 average annual compensation calculated using the twenty (20) calendar  
42 quarters of service in a position covered by the retirement fund before

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retirement in which the member's annual compensation was the highest. However, in order for a quarter to be included in the twenty (20) calendar quarters, the nonteacher member must have performed service throughout the calendar quarter. All twenty (20) calendar quarters do not have to be continuous but they must be in groups of four (4) consecutive calendar quarters. The same calendar quarter may not be included in two (2) different groups.

(b) **This subsection does not apply to a teacher member described in subsection (c).** In computing the retirement benefit for a teacher member, "average of the annual compensation" means the average annual compensation for the five (5) years of service before retirement in which the member's annual compensation was highest. In order for a year to be included in the five (5) years, the teacher member must have received for the year credit under IC 21-6.1-4-2 for at least one-half (1/2) year of service. The five (5) years do not have to be continuous.

(c) **This subsection applies to a member of the Indiana state teachers' retirement fund who serves in an elected position for which the member takes an unpaid leave of absence. In computing the retirement benefit for a teacher member described in this subsection for years of service to which IC 21-6.1-5-7.5 does not apply, "average of the annual compensation" means the annual compensation for the one (1) year of service before retirement in which the member's annual compensation was highest. In order for a year to be used, the teacher member must have received for the year credit under IC 21-6.1-4-2 for at least one-half (1/2) year of service.**

(d) Subject to IC 5-10.2-2-1.5 "annual compensation" means:

(1) the basic salary earned by and paid to the member plus the amount that would have been part of that salary but for:

(1) ~~(A)~~ **(A)** the state's, a school corporation's, a participating political subdivision's, or a state educational institution's (as defined in IC 20-12-0.5-1) paying the member's contribution to the fund for the member; or

(2) ~~(B)~~ **(B)** the member's salary reduction agreement established under Section 125, 403(b), or 457 of the Internal Revenue Code; and

(2) **in the case of a member described in subsection (c) and for years of service to which IC 21-6.1-5-7.5 does not apply, the basic salary that was not paid during the year but would have been paid to the member during the year under the member's employment contracts if the member had not taken any**

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**unpaid leave of absence to serve in an elected position.**

The portion of a back pay award or a similar award that the board determines is compensation under an agreement or under a judicial or an administrative proceeding shall be allocated by the board among the years the member earned or should have earned the compensation. Only that portion of the award allocated to the year the award is made is considered to have been earned during the year the award was made. Interest on an award is not considered annual compensation for any year.

~~(d)~~ (e) Compensation of no more than two thousand dollars (\$2,000) received from the employer in contemplation of the member's retirement, including severance pay, termination pay, retirement bonus, or commutation of unused sick leave or personal leave, may be included in the total annual compensation from which the average of the annual compensation is determined, if it is received:

- (1) before the member ceases service; or
- (2) within twelve (12) months after the member ceases service.

~~(e)~~ (f) This section applies to a member of the general assembly:

- (1) who is a participant in the legislators' retirement system established under IC 2-3.5;
- (2) who is also a member of the public employees' retirement fund or the state teachers' retirement fund; and
- (3) whose years of service in the general assembly may not be considered in determining the average of the annual compensation under this section, as provided in IC 2-3.5-1-2(b)(2) or IC 2-3.5-3-1(c).

The board shall use the board's actuarial salary increase assumption to project the salary for any previous year needed to determine the average of the annual compensation.

SECTION 3. IC 33-11.6-4-15, AS AMENDED BY P.L.141-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 15. (a) The costs consist of **the following**:

- (1) A township docket fee equal to five dollars (\$5) plus forty-five percent (45%) of the infraction or ordinance violation costs fee under IC 33-19-5-2.
- (2) Bailiff's service of process by registered or certified mail fee of thirteen dollars (\$13) for each service.
- (3) The cost for the personal service of process by the bailiff or other process server in the amount of thirteen dollars (\$13) for each service.
- (4) Witness fees, if any, in the amount provided by IC 33-19-1-6 to be taxed and charged in the circuit court of the county.

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- (5) A redocketing fee, if any, of five dollars (\$5).
- (6) A document storage fee under IC 33-19-6-18.1.
- (7) An automated record keeping fee under IC 33-19-6-19. ~~and~~
- (8) A late fee, if any, under IC 33-19-6-20.

**(9) A judicial salaries fee under IC 33-19-6-18.**

The docket fee and the cost for the initial service of process shall be paid upon the institution of each case. The cost of service rendered subsequent to the initial service shall be assessed and paid after such service has been made, and the cost of witness fees shall be paid before the witnesses are called.

(b) If the amount of the township docket fee computed under subsection (a)(1) is not equal to a whole number, the amount shall be rounded to the next highest whole number.

SECTION 4. IC 33-19-5-1, AS AMENDED BY P.L.1-2002, SECTION 133, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) For each action that results in a felony conviction under IC 35-50-2 or a misdemeanor conviction under IC 35-50-3, the clerk shall collect from the defendant a criminal costs fee of one hundred twenty dollars (\$120).

(b) In addition to the criminal costs fee collected under this section, the clerk shall collect from the defendant the following fees if they are required under IC 33-19-6:

- (1) A document fee.
- (2) A marijuana eradication program fee.
- (3) An alcohol and drug services program user fee.
- (4) A law enforcement continuing education program fee.
- (5) A drug abuse, prosecution, interdiction, and correction fee.
- (6) An alcohol and drug countermeasures fee.
- (7) A child abuse prevention fee.
- (8) A domestic violence prevention and treatment fee.
- (9) A highway work zone fee.
- (10) A deferred prosecution fee (IC 33-19-6-16.2).
- (11) A document storage fee (IC 33-19-6-18.1).
- (12) An automated record keeping fee (IC 33-19-6-19).
- (13) A late payment fee (IC 33-19-6-20).
- (14) A sexual assault victims assistance fee (IC 33-19-6-21).

**(15) A judicial salaries fee (IC 33-19-6-18).**

(c) Instead of the criminal costs fee prescribed by this section, the clerk shall collect a pretrial diversion program fee if an agreement between the prosecuting attorney and the accused person entered into under IC 33-14-1-7 requires payment of those fees by the accused person. The pretrial diversion program fee is:

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- (1) an initial user's fee of fifty dollars (\$50); and
- (2) a monthly user's fee of ten dollars (\$10) for each month that the person remains in the pretrial diversion program.

(d) The clerk shall transfer to the county auditor or city or town fiscal officer the following fees, within thirty (30) days after they are collected, for deposit by the auditor or fiscal officer in the appropriate user fee fund established under IC 33-19-8:

- (1) The pretrial diversion fee.
- (2) The marijuana eradication program fee.
- (3) The alcohol and drug services program user fee.
- (4) The law enforcement continuing education program fee.

(e) Unless otherwise directed by a court, if a clerk collects only part of a criminal costs fee from a defendant under this section, the clerk shall distribute the partial payment of the criminal costs fee as follows:

- (1) First, the clerk shall apply the partial payment to general court costs.
- (2) Second, if there is money remaining after the partial payment is applied to general court costs under subdivision (1), the clerk shall distribute the partial payment for deposit in the appropriate county user fee fund.
- (3) Third, if there is money remaining after distribution under subdivision (2), the clerk shall distribute the partial payment for deposit in the state user fee fund.
- (4) Fourth, if there is money remaining after distribution under subdivision (3), the clerk shall distribute the partial payment to any other applicable user fee fund.
- (5) Fifth, if there is money remaining after distribution under subdivision (4), the clerk shall apply the partial payment to any outstanding fines owed by the defendant.

SECTION 5. IC 33-19-5-2, AS AMENDED BY P.L.1-2002, SECTION 134, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) Except as provided in subsections (d) and (e), for each action that results in a judgment:

- (1) for a violation constituting an infraction; or
- (2) for a violation of an ordinance of a municipal corporation (as defined in IC 36-1-2-10);

the clerk shall collect from the defendant an infraction or ordinance violation costs fee of seventy dollars (\$70).

(b) In addition to the infraction or ordinance violation costs fee collected under this section, the clerk shall collect from the defendant the following fees if they are required under IC 33-19-6:

- (1) A document fee (IC 33-19-6-1, IC 33-19-6-2, IC 33-19-6-3).

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(2) An alcohol and drug services program user fee (IC 33-19-6-7(b)).

(3) A law enforcement continuing education program fee (IC 33-19-6-7(c)).

(4) An alcohol and drug countermeasures fee (IC 33-19-6-10).

(5) A highway work zone fee (IC 33-19-6-14).

(6) A deferred prosecution fee (IC 33-19-6-16.2).

(7) A jury fee (IC 33-19-6-17).

(8) A document storage fee (IC 33-19-6-18.1).

(9) An automated record keeping fee (IC 33-19-6-19).

(10) A late payment fee (IC 33-19-6-20).

**(11) A judicial salaries fee (IC 33-19-6-18).**

(c) The clerk shall transfer to the county auditor or fiscal officer of the municipal corporation the following fees, within thirty (30) days after they are collected, for deposit by the auditor or fiscal officer in the user fee fund established under IC 33-19-8:

(1) The alcohol and drug services program user fee.

(2) The law enforcement continuing education program fee.

(3) The deferral program fee.

(d) The defendant is not liable for any ordinance violation costs fee in an action in which:

(1) the defendant was charged with an ordinance violation subject to IC 33-6-3;

(2) the defendant denied the violation under IC 33-6-3-2;

(3) proceedings in court against the defendant were initiated under IC 34-28-5 (or IC 34-4-32 before its repeal); and

(4) the defendant was tried and the court entered judgment for the defendant for the violation.

(e) Instead of the infraction or ordinance violation costs fee prescribed by subsection (a), the clerk shall collect a deferral program fee if an agreement between a prosecuting attorney or an attorney for a municipal corporation and the person charged with a violation entered into under IC 34-28-5-1 (or IC 34-4-32-1 before its repeal) requires payment of those fees by the person charged with the violation. The deferral program fee is:

(1) an initial user's fee not to exceed fifty-two dollars (\$52); and

(2) a monthly user's fee not to exceed ten dollars (\$10) for each month the person remains in the deferral program.

SECTION 6. IC 33-19-5-3, AS AMENDED BY P.L.1-2002, SECTION 135, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) For each action filed under:

(1) IC 31-34 or IC 31-37 (delinquent children and children in

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need of services); or

(2) IC 31-14 (paternity);

the clerk shall collect a juvenile costs fee of one hundred twenty dollars (\$120).

(b) In addition to the juvenile costs fee collected under this section, the clerk shall collect the following fees if they are required under IC 33-19-6:

(1) A document fee.

(2) A marijuana eradication program fee.

(3) An alcohol and drug services program user fee.

(4) A law enforcement continuing education program fee.

(5) An alcohol and drug countermeasures fee.

(6) A document storage fee (IC 33-19-6-18.1).

(7) An automated record keeping fee (IC 33-19-6-19).

(8) A late payment fee (IC 33-19-6-20).

**(9) A judicial salaries fee (IC 33-19-6-18).**

(c) The clerk shall transfer to the county auditor or city or town fiscal officer the following fees, within thirty (30) days after they are collected, for deposit by the auditor or fiscal officer in the appropriate user fee fund established under IC 33-19-8:

(1) The marijuana eradication program fee.

(2) The alcohol and drug services program user fee.

(3) The law enforcement continuing education program fee.

SECTION 7. IC 33-19-5-4, AS AMENDED BY P.L.1-2002, SECTION 136, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) For each civil action except:

(1) proceedings to enforce a statute defining an infraction under IC 34-28-5-4 (or IC 34-4-32-4 before its repeal);

(2) proceedings to enforce an ordinance under IC 34-28-5-4 (or IC 34-4-32-4 before its repeal);

(3) proceedings in juvenile court under IC 31-34 or IC 31-37;

(4) proceedings in paternity under IC 31-14;

(5) proceedings in small claims court under IC 33-11.6; and

(6) proceedings in actions under section 6 of this chapter;

the clerk shall collect from the party filing the action a civil costs fee of one hundred dollars (\$100).

(b) In addition to the civil costs fee collected under this section, the clerk shall collect the following fees if they are required under IC 33-19-6:

(1) A document fee.

(2) A support and maintenance fee.

(3) A document storage fee (IC 33-19-6-18.1).

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(4) An automated record keeping fee (IC 33-19-6-19).

**(5) A judicial salaries fee (IC 33-19-6-18).**

SECTION 8. IC 33-19-5-5, AS AMENDED BY P.L.167-2003, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) For each small claims action the clerk shall collect from the party filing the action a:

- (1) small claims costs fee of thirty-five dollars (\$35); and
- (2) small claims service fee of five dollars (\$5) for each defendant named or added in the small claims action.

However, a clerk may not collect a small claims costs fee or small claims service fee for a small claims action filed by or on behalf of the attorney general.

(b) In addition to a small claims costs fee and small claims service fee collected under this section, the clerk shall collect the following fees if they are required under IC 33-19-6:

- (1) A document fee.
- (2) A document storage fee (IC 33-19-6-18.1).
- (3) An automated record keeping fee (IC 33-19-6-19).

**(4) A judicial salaries fee (IC 33-19-6-18).**

SECTION 9. IC 33-19-5-6, AS AMENDED BY P.L.1-2002, SECTION 138, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. (a) Except as provided under subsection (c), for each action filed under:

- (1) IC 6-4.1-5 (determination of inheritance tax);
- (2) IC 29 (probate); and
- (3) IC 30 (trusts and fiduciaries);

the clerk shall collect from the party filing the action a probate costs fee of one hundred twenty dollars (\$120).

(b) In addition to the probate costs fee collected under this section, the clerk shall collect from the party filing the action the following fees if they are required under IC 33-19-6:

- (1) A document fee.
- (2) A document storage fee (IC 33-19-6-18.1).
- (3) An automated record keeping fee (IC 33-19-6-19).

**(4) A judicial salaries fee (IC 33-19-6-18).**

(c) A clerk may not collect a court costs fee for the filing of the following exempted actions:

- (1) Petition to open a safety deposit box.
- (2) Filing an inheritance tax return, unless proceedings other than the court's approval of the return become necessary.
- (3) Offering a will for probate under IC 29-1-7, unless proceedings other than admitting the will to probate become

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necessary.

SECTION 10. IC 33-19-6-18 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 18. (a) This subsection does not apply to the following:**

- (1) **A criminal proceeding.**
- (2) **A proceeding for an infraction violation.**
- (3) **A proceeding for an ordinance violation.**

**In each action filed in a court described in IC 33-19-1-1, the clerk shall collect a judicial salaries fee of six dollars (\$6).**

**(b) In each action in which a person is:**

- (1) **convicted of an offense;**
- (2) **required to pay a pretrial diversion fee;**
- (3) **found to have violated an infraction; or**
- (4) **found to have violated an ordinance;**

**the clerk shall collect a judicial salaries fee of six dollars (\$6).**

SECTION 11. IC 33-19-7-1, AS AMENDED BY P.L.167-2003, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 1. (a) The clerk of a circuit court shall semiannually distribute to the auditor of state as the state share for deposit in the state general fund seventy percent (70%) of the amount of fees collected under the following:**

- (1) IC 33-19-5-1(a) (criminal costs fees).
- (2) IC 33-19-5-2(a) (infraction or ordinance violation costs fees).
- (3) IC 33-19-5-3(a) (juvenile costs fees).
- (4) IC 33-19-5-4(a) (civil costs fees).
- (5) IC 33-19-5-5(a)(1) (small claims costs fees).
- (6) IC 33-19-5-6(a) (probate costs fees).
- (7) IC 33-19-6-16.2 (deferred prosecution fees).

**(b) The clerk of a circuit court shall semiannually distribute to the auditor of state for deposit in the state user fee fund established under IC 33-19-9-2 the following:**

- (1) **Twenty-five percent (25%) of the drug abuse, prosecution, interdiction, and correction fees collected under IC 33-19-5-1(b)(5).**
- (2) **Twenty-five percent (25%) of the alcohol and drug countermeasures fees collected under IC 33-19-5-1(b)(6), IC 33-19-5-2(b)(4), and IC 33-19-5-3(b)(5).**
- (3) **Fifty percent (50%) of the child abuse prevention fees collected under IC 33-19-5-1(b)(7).**
- (4) **One hundred percent (100%) of the domestic violence prevention and treatment fees collected under IC 33-19-5-1(b)(8).**

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(5) One hundred percent (100%) of the highway work zone fees collected under IC 33-19-5-1(b)(9) and IC 33-19-5-2(b)(5).

(6) One hundred percent (100%) of the safe schools fee collected under IC 33-19-6-16.3.

(7) One hundred percent (100%) of the automated record keeping fee (IC 33-19-6-19).

(c) The clerk of a circuit court shall monthly distribute to the county auditor the following:

(1) Seventy-five percent (75%) of the drug abuse, prosecution, interdiction, and correction fees collected under IC 33-19-5-1(b)(5).

(2) Seventy-five percent (75%) of the alcohol and drug countermeasures fees collected under IC 33-19-5-1(b)(6), IC 33-19-5-2(b)(4), and IC 33-19-5-3(b)(5).

The county auditor shall deposit fees distributed by a clerk under this subsection into the county drug free community fund established under IC 5-2-11.

(d) The clerk of a circuit court shall monthly distribute to the county auditor fifty percent (50%) of the child abuse prevention fees collected under IC 33-19-5-1(b)(8). The county auditor shall deposit fees distributed by a clerk under this subsection into the county child advocacy fund established under IC 12-17-17.

(e) The clerk of a circuit court shall monthly distribute to the county auditor one hundred percent (100%) of the late payment fees collected under IC 33-19-6-20. The county auditor shall deposit fees distributed by a clerk under this subsection as follows:

(1) If directed to do so by an ordinance adopted by the county fiscal body, the county auditor shall deposit forty percent (40%) of the fees in the clerk's record perpetuation fund established under IC 33-19-6-1.5 and sixty percent (60%) of the fees in the county general fund.

(2) If the county fiscal body has not adopted an ordinance under subdivision (1), the county auditor shall deposit all the fees in the county general fund.

(f) The clerk of the circuit court shall semiannually distribute to the auditor of state for deposit in the sexual assault victims assistance fund established under IC 16-19-13-6 one hundred percent (100%) of the sexual assault victims assistance fees collected under IC 33-19-6-21.

(g) The clerk of a circuit court shall monthly distribute to the county auditor the following:

(1) One hundred percent (100%) of the support and maintenance fees for cases designated as non-Title IV-D child support cases in

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the Indiana support enforcement tracking system (ISETS) collected under IC 33-19-6-5.

(2) The percentage share of the support and maintenance fees for cases designated as IV-D child support cases in ISETS collected under IC 33-19-6-5 that is reimbursable to the county at the federal financial participation rate.

The county clerk shall monthly distribute to the office of the secretary of family and social services the percentage share of the support and maintenance fees for cases designated as Title IV-D child support cases in ISETS collected under IC 33-19-6-5 that is not reimbursable to the county at the applicable federal financial participation rate.

(h) The clerk of a circuit court shall monthly distribute to the county auditor one hundred percent (100%) of the small claims service fee under IC 33-19-5-5(a)(2) for deposit in the county general fund.

**(i) The clerk of a circuit court shall semiannually distribute to the auditor of state for deposit in the state general fund one hundred percent (100%) of the judicial salaries fee collected under IC 33-19-6-18.**

SECTION 12. IC 33-19-7-4, AS AMENDED BY P.L.167-2003, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) The clerk of a city or town court shall semiannually distribute to the auditor of state as the state share for deposit in the state general fund fifty-five percent (55%) of the amount of fees collected under the following:

- (1) IC 33-19-5-1(a) (criminal costs fees).
- (2) IC 33-19-5-2(a) (infraction or ordinance violation costs fees).
- (3) IC 33-19-5-4(a) (civil costs fees).
- (4) IC 33-19-5-5(a)(1) (small claims costs fees).
- (5) IC 33-19-6-16.2 (deferred prosecution fees).

(b) Once each month the city or town fiscal officer shall distribute to the county auditor as the county share twenty percent (20%) of the amount of fees collected under the following:

- (1) IC 33-19-5-1(a) (criminal costs fees).
- (2) IC 33-19-5-2(a) (infraction or ordinance violation costs fees).
- (3) IC 33-19-5-4(a) (civil costs fees).
- (4) IC 33-19-5-5(a)(1) (small claims costs fees).
- (5) IC 33-19-6-16.2 (deferred prosecution fees).

(c) The city or town fiscal officer shall retain twenty-five percent (25%) as the city or town share of the fees collected under the following:

- (1) IC 33-19-5-1(a) (criminal costs fees).
- (2) IC 33-19-5-2(a) (infraction or ordinance violation costs fees).

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(3) IC 33-19-5-4(a) (civil costs fees).

(4) IC 33-19-5-5(a)(1) (small claims costs fees).

(5) IC 33-19-6-16.2 (deferred prosecution fees).

(d) The clerk of a city or town court shall semiannually distribute to the auditor of state for deposit in the state user fee fund established under IC 33-19-9 the following:

(1) Twenty-five percent (25%) of the drug abuse, prosecution, interdiction, and corrections fees collected under IC 33-19-5-1(b)(5).

(2) Twenty-five percent (25%) of the alcohol and drug countermeasures fees collected under IC 33-19-5-1(b)(6), IC 33-19-5-2(b)(4), and IC 33-19-5-3(b)(5).

(3) One hundred percent (100%) of the highway work zone fees collected under IC 33-19-5-1(b)(9) and IC 33-19-5-2(b)(5).

(4) One hundred percent (100%) of the safe schools fee collected under IC 33-19-6-16.3.

(5) One hundred percent (100%) of the automated record keeping fee (IC 33-19-6-19).

(e) The clerk of a city or town court shall monthly distribute to the county auditor the following:

(1) Seventy-five percent (75%) of the drug abuse, prosecution, interdiction, and corrections fees collected under IC 33-19-5-1(b)(5).

(2) Seventy-five percent (75%) of the alcohol and drug countermeasures fees collected under IC 33-19-5-1(b)(6), IC 33-19-5-2(b)(4), and IC 33-19-5-3(b)(5).

The county auditor shall deposit fees distributed by a clerk under this subsection into the county drug free community fund established under IC 5-2-11.

(f) The clerk of a city or town court shall distribute monthly to the city or town fiscal officer (as defined in IC 36-1-2-7) one hundred percent (100%) of the late payment fees collected under IC 33-19-6-20. The city or town fiscal officer (as defined in IC 36-1-2-7) shall deposit fees distributed by a clerk under this subsection in the city or town general fund.

**(g) The clerk of a city or town court shall semiannually distribute to the auditor of state for deposit in the state general fund one hundred percent (100%) of the judicial salaries fee collected under IC 33-19-6-18.**

SECTION 13. [EFFECTIVE UPON PASSAGE] (a) Notwithstanding IC 1-1-1-8, the provisions of this SECTION are not severable.

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(b) Except as provided in this SECTION, the definitions in IC 2-5-1.5, as added by this act, apply throughout this SECTION.

(c) As used in this SECTION, "commission" refers to the public officers compensation commission established by subsection (e).

(d) As used in this SECTION "growth rate" equals two and one-half percent (2.5%).

(e) The public officers compensation commission is established.

(f) The commission consists of the following members:

(1) Two (2) members appointed by the speaker of the house of representatives. The members appointed under this subdivision may not be members of the same political party.

(2) Two (2) members appointed by the president pro tempore of the senate. The members appointed under this subdivision may not be members of the same political party.

(3) Two (2) members appointed by the governor. The members appointed under this subdivision may not be members of the same political party.

(4) Two (2) members appointed by the chief justice of the supreme court of Indiana. The members appointed under this subdivision may not be members of the same political party.

(5) One (1) member appointed by the chief judge of the court of appeals of Indiana.

(g) The following may not be a commission member:

(1) A public officer.

(2) A public employee.

(3) An individual who has a pecuniary interest in the salary of a public officer. For purposes of this subdivision, an individual has a pecuniary interest in the salary of a public officer if an increase in the salary of a public officer will result in an ascertainable increase in the income or net worth of the individual.

(h) The chairman of the legislative council shall appoint one (1) member to be chair of the commission.

(i) Five (5) commission members constitute a quorum. The affirmative votes of at least five (5) commission members are necessary for the commission to take official action other than to adjourn or to meet to hear reports or testimony.

(j) The commission shall meet at the call of the chair and at other times as the commission considers necessary.

(k) Each member of the commission is entitled to the following:

(1) The salary per diem provided under IC 4-10-11-2.1(b).

(2) Reimbursement for traveling expenses as provided under

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1 IC 4-13-1-4.

2 (3) Other expenses actually incurred in connection with the  
3 member's duties as provided in the state policies and  
4 procedures established by the Indiana department of  
5 administration and approved by the budget agency.

6 (l) The legislative services agency shall provide administrative  
7 support for the commission.

8 (m) Notwithstanding IC 4-22-2, the commission may adopt rules  
9 that have the force and effect of law to fix salaries of public  
10 officers.

11 (n) Except as otherwise provided by this chapter, the  
12 commission is subject to the rules of the legislative council.

13 (o) The commission shall meet after October 31, 2004, and  
14 before November 16, 2004, to do the following:

15 (1) Receive information relating to the salaries of public  
16 officers.

17 (2) Consider recommendations for suitable salaries for public  
18 officers.

19 (3) Take testimony relating to the salaries of public officers.

20 (4) For each public officer listed in IC 2-5-1.5-6, as added by  
21 this act, determine the most recent year that the public officer  
22 received a salary increase.

23 (5) Adopt, if necessary, proposed rules to set the salaries of  
24 public officers.

25 (p) If the commission adopts rules to change the salary of a  
26 public officer, the commission must adopt a separate rule for each  
27 separate public officer listed in IC 2-5-1.5-6, as added by this act,  
28 whose salary is to be changed.

29 (q) The commission is not required to adopt or amend a rule to  
30 change the salary of a public officer if the commission considers  
31 the current salary suitable.

32 (r) If the commission does not adopt a rule relating to the salary  
33 of a public officer, the salary of the public officer is the salary  
34 provided by law.

35 (s) The rate of increase in the salary of a public officer may not  
36 exceed the amount determined had the salary of the public officer  
37 increased each year since the most recent year the public officer  
38 received a salary increase by the growth rate.

39 (t) A rule adopted under this SECTION must be published in  
40 the January 2005 edition of the Indiana Register.

41 (u) A rule adopted by the commission to set the salaries of a  
42 public officer takes effect as follows:

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(1) If the rule relates to the salary of the governor, the final rule takes effect January 10, 2005. However, any increase in the salary of the governor shall be paid in a lump sum on July 1, 2005.

(2) If the rule relates to the salary of a member of the general assembly, the final rule takes effect on January 1, 2005. However, any increase in the salary of a member of the general assembly shall be paid in a lump sum on July 1, 2005.

(3) If the rule relates to the salary of a public officer other than a public officer described in subdivision (1) or (2), the final rule takes effect on July 1, 2005.

(v) A rule relating to the salary of a public officer may not diminish the compensation of the public officer below its level at the time the rule becomes effective.

(w) This SECTION expires July 1, 2005.

SECTION 14. [EFFECTIVE JUNE 1, 2004] IC 5-10.2-4-3, as amended by this act, applies only to members of the Indiana state teachers' retirement fund who retire after May 31, 2004.

SECTION 15. [EFFECTIVE JULY 1, 2004] (a) In addition to a small claims costs fee and small claims service fee collected under IC 33-19-5-5, as in effect on July 1, 2004, the circuit court clerk shall collect a judicial salaries fee under IC 33-19-6-18, as added by this act, if the judicial salaries fee is required to be collected under IC 33-19-6.

(b) This SECTION expires July 1, 2005.

SECTION 16. [EFFECTIVE JULY 1, 2004] (a) A circuit court clerk shall semiannually distribute to the auditor of state for deposit in the state general fund one hundred percent (100%) of the judicial salaries fee collected under IC 33-19-6-18.

(b) The clerk of a city or town court shall semiannually distribute to the auditor of state for deposit in the state general fund one hundred percent (100%) of the judicial salaries fee collected under IC 33-19-6-18.

(c) This SECTION expires July 1, 2005.

SECTION 17. [EFFECTIVE UPON PASSAGE] Notwithstanding IC 1-1-1-8, the provisions of this act are not severable.

SECTION 18. An emergency is declared for this act.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1401, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 17, line 26, delete "August 1, 2004," and insert "**April 1, 2005,**".

Page 17, line 32, delete "2004." and insert "**2005.**".

Page 17, line 42, delete "December 2004" and insert "**June 2005**".

Page 18, between lines 3 and 4, begin a new paragraph and insert:  
"**(e) A change in the salary of a public officer under this SECTION may not become effective before July 1, 2005.**".

Page 18, line 4, delete "(e)" and insert "**(f)**".

Page 18, line 7, delete "(f)" and insert "**(g)**".

Page 18, line 7, delete "2005." and insert "**2006.**".

and when so amended that said bill do pass.

(Reference is to HB 1401 as introduced.)

CRAWFORD, Chair

Committee Vote: yeas 20, nays 6.

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## HOUSE MOTION

Mr. Speaker: I move that House Bill 1401 be amended to read as follows:

Page 1, delete lines 1 through 17, begin a new paragraph and insert:  
 "SECTION 1. IC 2-5-1.5 IS ADDED TO THE INDIANA CODE AS  
 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
 1, 2004]:

**Chapter 1.5. Public Officers Compensation Advisory Commission**

**Sec. 1. This chapter applies after December 31, 2004.**

**Sec. 2. As used in this chapter, "commission" refers to the public officers compensation advisory commission established by section 7 of this chapter.**

**Sec. 3. As used in this chapter, "growth rate" refers to the rate of change in Indiana nonfarm income determined by the Bureau of Economic Analysis of the United States Department of Commerce.**

**Sec. 4. As used in this chapter, "political subdivision" has the meaning set forth in IC 36-1-2-13.**

**Sec. 5. As used in this chapter, "public employee" refers to any of the following:**

- (1) An employee of the state.**
- (2) An employee of a political subdivision.**
- (3) An employee of any other entity whose salary is paid in any part from funds derived from taxes imposed by the state or a political subdivision.**

**Sec. 6. As used in this chapter, "public officer" refers to any of the following:**

- (1) The governor.**
- (2) The lieutenant governor.**
- (3) The secretary of state.**
- (4) The auditor of state.**
- (5) The treasurer of state.**
- (6) The attorney general.**
- (7) The clerk of the supreme court.**
- (8) The state superintendent of public instruction.**
- (9) A justice of the supreme court of Indiana.**
- (10) A judge of the court of appeals of Indiana.**
- (11) A judge of the Indiana tax court.**
- (12) A judge of a circuit, superior, probate, or county court.**
- (13) A member of the general assembly.**

**Sec. 7. There is established the public officers compensation advisory commission.**

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**Sec. 8. (a) The commission consists of the following members:**

- (1) Two (2) members appointed by the speaker of the house of representatives. The members appointed under this subdivision may not be members of the same political party.**
- (2) Two (2) members appointed by the president pro tempore of the senate. The members appointed under this subdivision may not be members of the same political party.**
- (3) Two (2) members appointed by the governor. The members appointed under this subdivision may not be members of the same political party.**
- (4) Two (2) members appointed by the chief justice of the supreme court of Indiana. The members appointed under this subdivision may not be members of the same political party.**
- (5) One (1) member appointed by the chief judge of the court of appeals of Indiana.**

**(b) The following may not be a commission member:**

- (1) A public officer.**
- (2) A public employee.**
- (3) An individual who has a pecuniary interest in the salary of a public officer. For purposes of this subdivision, an individual has a pecuniary interest in the salary of a public officer if an increase in the salary of a public officer will result in an ascertainable increase in the income or net worth of the individual.**

**Sec. 9. (a) The term of a commission member begins on the later of the following:**

- (1) July 1 after the member is appointed.**
- (2) The day the member accepts the member's appointment.**

**(b) The term of a commission member expires on July 1 of the fourth year after the year the member's term begins.**

**(c) A member may be reappointed to serve a new term.**

**Sec. 10. (a) If there is a vacancy on the commission, the public officer who appointed the member whose position is vacant shall appoint an individual to fill the vacancy.**

**(b) The member appointed under this section shall fill the vacancy for the remainder of the unexpired term.**

**Sec. 11. (a) Before July 1 of each odd numbered year, the chairman of the legislative council shall appoint one (1) member to be chair of the commission.**

**(b) The member appointed as chair of the commission serves as chair beginning July 1 after appointment.**

**(c) A member of the commission may be reappointed as chair of**

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the commission.

**Sec. 12. Five (5) commission members constitute a quorum. The affirmative votes of at least five (5) commission members are necessary for the commission to take official action other than to adjourn or to meet to hear reports or testimony.**

**Sec. 13. The commission shall meet at the call of the chair and at other times as the commission considers necessary.**

**Sec. 14. Each member of the commission is entitled to the following:**

- (1) The salary per diem provided under IC 4-10-11-2.1(b).**
- (2) Reimbursement for traveling expenses as provided under IC 4-13-1-4.**
- (3) Other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.**

**Sec. 15. The legislative services agency shall provide administrative support for the commission. At the request of the legislative services agency, the state personnel department or the Indiana judicial center established by IC 33-13-14-2 shall assign staff to provide research and other support to assist the legislative services agency in providing administrative support to the commission.**

**Sec. 16. The legislative services agency may contract with consultants on behalf of the commission as the commission considers necessary to implement this chapter.**

**Sec. 17. Except as otherwise provided by this chapter, the commission is subject to the rules of the legislative council.**

**Sec. 18. The commission shall make reports to the general assembly as required by this chapter or by the legislative council.**

**Sec. 19. The commission shall meet at least one (1) time not later than July 1 of each even-numbered year to do the following:**

- (1) Determine the growth rate from January 1 of the previous year to January 1 of the current year.**
- (2) Receive information relating to the salaries of public officers.**
- (3) Consider recommendations for suitable salaries for public officers.**
- (4) Take testimony relating to the salaries of public officers.**

**Sec. 20. (a) Not later than September 1 of each even-numbered year, the commission shall make written recommendations to the:**

- (1) legislative council; and**

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(2) budget committee;  
concerning suitable salaries for public officers.

(b) When making recommendations, the commission shall make a separate recommendation, including a recommendation for no adjustment of salary, for each separate public officer listed in section 6 of this chapter.

(c) The commission may not recommend a rate of increase in the salary of a public officer that exceeds the growth rate.

Sec. 21. A commission recommendation does not take effect unless enacted by the general assembly.

Sec. 22. There is appropriated to the legislative services agency from the state general fund money necessary for the operation of the commission.

Sec. 23. Notwithstanding IC 1-1-1-8, the provisions of this chapter are not severable."

Delete pages 2 through 4.

Page 5, delete lines 1 through 19.

Page 16, delete lines 23 through 42, begin a new paragraph and insert:

"SECTION 13. [EFFECTIVE UPON PASSAGE] (a) Notwithstanding IC 1-1-1-8, the provisions of this SECTION are not severable.

(b) Except as provided in this SECTION, the definitions in IC 2-5-1.5, as added by this act, apply throughout this SECTION.

(c) As used in this SECTION, "commission" refers to the public officers compensation commission established by subsection (e).

(d) As used in this SECTION "growth rate" equals two and one-half percent (2.5%).

(e) The public officers compensation commission is established.

(f) The commission consists of the following members:

(1) Two (2) members appointed by the speaker of the house of representatives. The members appointed under this subdivision may not be members of the same political party.

(2) Two (2) members appointed by the president pro tempore of the senate. The members appointed under this subdivision may not be members of the same political party.

(3) Two (2) members appointed by the governor. The members appointed under this subdivision may not be members of the same political party.

(4) Two (2) members appointed by the chief justice of the supreme court of Indiana. The members appointed under this subdivision may not be members of the same political party.

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- (5) One (1) member appointed by the chief judge of the court of appeals of Indiana.
- (g) The following may not be a commission member:
  - (1) A public officer.
  - (2) A public employee.
  - (3) An individual who has a pecuniary interest in the salary of a public officer. For purposes of this subdivision, an individual has a pecuniary interest in the salary of a public officer if an increase in the salary of a public officer will result in an ascertainable increase in the income or net worth of the individual.
- (h) The chairman of the legislative council shall appoint one (1) member to be chair of the commission.
- (i) Five (5) commission members constitute a quorum. The affirmative votes of at least five (5) commission members are necessary for the commission to take official action other than to adjourn or to meet to hear reports or testimony.
- (j) The commission shall meet at the call of the chair and at other times as the commission considers necessary.
- (k) Each member of the commission is entitled to the following:
  - (1) The salary per diem provided under IC 4-10-11-2.1(b).
  - (2) Reimbursement for traveling expenses as provided under IC 4-13-1-4.
  - (3) Other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.
- (l) The legislative services agency shall provide administrative support for the commission.
- (m) Notwithstanding IC 4-22-2, the commission may adopt rules that have the force and effect of law to fix salaries of public officers.
- (n) Except as otherwise provided by this chapter, the commission is subject to the rules of the legislative council.
- (o) The commission shall meet after October 31, 2004, and before November 16, 2004, to do the following:
  - (1) Receive information relating to the salaries of public officers.
  - (2) Consider recommendations for suitable salaries for public officers.
  - (3) Take testimony relating to the salaries of public officers.
  - (4) For each public officer listed in IC 2-5-1.5-6, as added by

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this act, determine the most recent year that the public officer received a salary increase.

(5) Adopt, if necessary, proposed rules to set the salaries of public officers.

(p) If the commission adopts rules to change the salary of a public officer, the commission must adopt a separate rule for each separate public officer listed in IC 2-5-1.5-6, as added by this act, whose salary is to be changed.

(q) The commission is not required to adopt or amend a rule to change the salary of a public officer if the commission considers the current salary suitable.

(r) If the commission does not adopt a rule relating to the salary of a public officer, the salary of the public officer is the salary provided by law.

(s) The rate of increase in the salary of a public officer may not exceed the amount determined had the salary of the public officer increased each year since the most recent year the public officer received a salary increase by the growth rate.

(t) A rule adopted under this SECTION must be published in the January 2005 edition of the Indiana Register.

(u) A rule adopted by the commission to set the salaries of a public officer takes effect as follows:

(1) If the rule relates to the salary of the governor, the final rule takes effect January 10, 2005. However, any increase in the salary of the governor shall be paid in a lump sum on July 1, 2005.

(2) If the rule relates to the salary of a member of the general assembly, the final rule takes effect on January 1, 2005. However, any increase in the salary of a member of the general assembly shall be paid in a lump sum on July 1, 2005.

(3) If the rule relates to the salary of a public officer other than a public officer described in subdivision (1) or (2), the final rule takes effect on July 1, 2005.

(v) A rule relating to the salary of a public officer may not diminish the compensation of the public officer below its level at the time the rule becomes effective.

(w) This SECTION expires July 1, 2005."

Delete page 17.

Page 18, delete lines 1 through 9.

Renumber all SECTIONS consecutively.

(Reference is to HB 1401 as printed January 30, 2004.)

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